

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

KIMBERLY ALLEN, Personal
Representative of the ESTATE
OF TODD ALLEN, Individually,
on Behalf of the ESTATE OF
TODD ALLEN, and on Behalf of
the Minor Child PRESLEY
GRACE ALLEN,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

Case No. A04-0131 (JKS)

DEPOSITION OF KIMBERLY ALLEN

Pages 1 - 167, inclusive

Tuesday, April 12, 2005, 9:40 a.m.

Anchorage, Alaska

Alaska Stenotype Reporters

511 West Ninth Avenue

Anchorage AK 99501-3520

Serving Alaska Since 1953

Rick D. McWilliams, RPR, Ret.
Fred M. Getty, RPR, Ret.

Telephone 907.276.1680
Email AkSteno@aol.com
Fax 907.276.8016

Exhibit C

Kimberly Alen

Deposition

April 12, 2005

Page 85

1 **Q. Did you stop for meals?**
 2 A. No.
 3 **Q. All right. After you met this friend, where**
 4 **did you go next?**
 5 A. We went to the Microtel.
 6 **Q. Did you know you were going there before?**
 7 **Had you made a reservation?**
 8 A. I don't know if we made a reservation or
 9 not, but we had stayed there a few times. They always
 10 have rooms available.
 11 **Q. All right. And then once you got there,**
 12 **what did you do next? Did you stay in the hotel that**
 13 **night, or did you go out?**
 14 A. We stayed in the hotel.
 15 **Q. Did you see anyone else that evening?**
 16 A. No.
 17 **Q. Did Todd have any -- I apologize again.**
 18 **Mr. Allen, Todd, did he have any problems during the**
 19 **drive up from Valdez?**
 20 A. No. Just the normal pressure in his head --
 21 in his jaws. Excuse me.
 22 **Q. Did the driving through the mountains seem**
 23 **to affect him as it had in the past with this increase**
 24 **in pressure?**
 25 A. From the previous times that I have been

Page 86

1 with him, it was the same. It was the same pressure.
 2 It was a good drive. It was actually a very nice
 3 drive.
 4 **Q. I'm just trying to get a sense. You said**
 5 **there were times where driving through the mountains**
 6 **caused this increase in pressure.**
 7 A. That I noticed.
 8 **Q. Did that happen on this occasion, too?**
 9 A. Yeah.
 10 **Q. Any other complaints or problems that Todd,**
 11 **Mr. Allen, raised during this trip?**
 12 A. No.
 13 **Q. Any problems that you had during the trip?**
 14 A. No.
 15 **Q. And then you were at the hotel. And did you**
 16 **both go to bed at the same time?**
 17 A. No. I went to bed. I was tired. He stayed
 18 up.
 19 **Q. Do you know what he was doing when he stayed**
 20 **up?**
 21 A. No. I was sleeping.
 22 **Q. Do you know what time he finally came to**
 23 **bed?**
 24 A. He -- no. He never did.
 25 **Q. Was it after midnight?**

Page 87

1 A. I don't believe he ever slept. He woke me
 2 up at 6:00 a.m., saying he hadn't slept all night and
 3 that we had to go to the hospital right now.
 4 **Q. Okay. And what did he say then?**
 5 A. He said, "We have to go to the hospital
 6 right now."
 7 **Q. And what was he complaining about?**
 8 A. He said his head hurt.
 9 **Q. Anything else?**
 10 A. No. We got dressed and left.
 11 **Q. Did he tell you where on his head had hurt?**
 12 A. Not at that time. On the drive to, he did.
 13 **Q. So let's take this one at a time. He woke**
 14 **you up and says, we have to go to the hospital. My**
 15 **head hurts.**
 16 A. He said, "Get up. We have to go to the
 17 hospital right now. My head hurts."
 18 **Q. Okay. And he hadn't talked with you at all**
 19 **before that but it was now in the morning?**
 20 A. It was 6:00 o'clock in the morning.
 21 **Q. And you looked at the clock and saw that?**
 22 A. Yeah.
 23 **Q. Did you call ANMC before you went there?**
 24 A. No.
 25 **Q. And so you got dressed and got in the car**

Page 88

1 **and went to ANMC?**
 2 A. Correct.
 3 **Q. Who drove?**
 4 A. I did.
 5 **Q. And what did he tell you during the drive?**
 6 **You said he told you some more about this. What did**
 7 **he tell you?**
 8 A. He said it was a different pain. He said it
 9 wasn't jaw pain. And I could see that he was in pain.
 10 And from the fact that he was telling me he was in
 11 pain was -- contradicted out all the other incidents,
 12 going to the emergency room. He said it came from the
 13 back of his neck and radiated up to the top of his
 14 head.
 15 **Q. Did he give you any indication of how severe**
 16 **the pain was?**
 17 A. He said it hurt a lot.
 18 **Q. And did he tell you anything else, in terms**
 19 **of his symptoms or where it hurt or what hurt?**
 20 A. Like I said before, it came from the back of
 21 his head up to the top of his head, from the back of
 22 his neck to the top of his head.
 23 **Q. Did he tell you when it started?**
 24 A. No.
 25 **Q. Did he have any other symptoms? And I mean**

25 (Pages 85 to 88)

Kimberly Alen

Deposition

April 12, 2005

Page 89

1 anything now. I'm not trying to be joking on this,
2 but if he said, you know, my foot hurts or my eye
3 hurts at the same time or my back hurts. Anything
4 else that he was complaining about either before you
5 got in the car or on the drive over to ANMC?

6 A. No.

7 Q. Okay. And so when you drove over to ANMC,
8 where did you go in the hospital?

9 A. Emergency room.

10 Q. Had you been there before?

11 A. To the emergency room? Yes.

12 Q. So you didn't have someone tell you. You
13 knew where to go?

14 A. Correct.

15 Q. All right. And who did you see when you got
16 to the emergency room?

17 A. I'm not -- I don't know the name.

18 Q. Can you describe -- or was it a doctor, a
19 nurse, a clerk? Who did you see?

20 A. A clerk. When you walk in, you have to
21 check in basically and give them your name and sign in
22 to say you're here.

23 Q. And did you sign in?

24 A. Todd did.

25 Q. All right. Did you sign in or write

Page 91

1 is it? Do you remember him saying those exact words,
2 or you're just saying sort of the idea of what he
3 conveyed?

4 A. I cannot quote him, no.

5 Q. And I don't expect you to. That's what I
6 need to find out, is what you can remember exactly and
7 what you just remember generally.

8 Did he tell the clerk anything else about
9 his symptoms, when they started, how they started,
10 anything about his prior history, anything like that?

11 A. No.

12 Q. Okay. So basically your understanding was
13 he told the clerk he had pain in his head?

14 A. Correct.

15 Q. What happened next?

16 A. I believe we waited, waited in the waiting
17 room.

18 Q. And do you know how long you waited or
19 remember how long?

20 A. It seemed like 15, 20 minutes.

21 Q. And did Todd say anything to you while you
22 were waiting in the waiting room, give you any more
23 information about his symptoms or about what he was
24 feeling?

25 A. No.

Page 90

1 anything with the clerk?

2 A. Not that I remember.

3 Q. Do you remember having any discussion with
4 the clerk, you personally?

5 A. Not that I remember.

6 Q. Do you remember anything that Mr. Allen said
7 to the clerk?

8 A. He said he -- when you sign in, you have to
9 give them your name, your name, your date of birth,
10 your address, your information.

11 Q. Okay. Did he give the clerk any other
12 information?

13 A. Pain in his head. He had asked why you're
14 there.

15 Q. And is that the way he expressed it? I'm
16 trying to be really precise here in terms of whether
17 you remember specific words. And I may not have
18 explained this before, so let me -- from this point on
19 I want to try to be really careful in terms of what
20 you generally remember as opposed to what you
21 specifically remember.

22 So first I want to find out: Can you
23 specifically remember him saying this specific word, I
24 have pain in my head, or is it just he generally told
25 this person, I have got a pain in my head? So which

Page 92

1 Q. Did he do anything else while you were in
2 the waiting room to indicate that he was suffering
3 some different problem, start holding his leg or start
4 holding his chest or moaning because his arm -- or
5 anything that would indicate to you something other
6 than just him having this pain in his head?

7 A. No.

8 Q. Did he vomit or was he nauseous while he was
9 in the emergency room waiting?

10 A. Well, he said he was nauseous. He said he
11 had been throwing up all night.

12 Q. And when did he say that?

13 A. Sorry. He said that in the truck. He said
14 he had been up throwing up all night.

15 Q. So while you were driving over, he told you
16 he had thrown up during the night?

17 A. Uh-huh.

18 Q. Did he tell you how many times?

19 A. He did not.

20 Q. Did he tell you anything about whether he
21 had taken any pain medication that night?

22 A. He said he -- he said he had taken some
23 things, but he wasn't sure that, since he was throwing
24 up, if, you know, they were working or not.

25 Q. And did you know -- from that, were you able

26 (Pages 89 to 92)

Kimberly Alen

Deposition

April 12, 2005

Page 93

1 to tell whether he took one pain pill or two pain
 2 pills or four pain pills? Did you have any idea how
 3 much he took?
 4 A. I'm not sure of how many, and I'm not sure
 5 of what.
 6 Q. And do you know when he took them in the
 7 course of the night, from 12:00 midnight the night
 8 before to 6:00 in the morning? Do you know?
 9 A. No, I don't.
 10 Q. Do you know when in the course of that time
 11 period from 12:00, let's say -- well, what time did
 12 you go to bed the night before? Do you remember that?
 13 A. It was late. It was probably around --
 14 between 11:00 and 12:00.
 15 Q. Okay. So from the time you went to bed
 16 until 6:00 in the morning, did you have any idea back
 17 then when he threw up?
 18 A. No.
 19 Q. Anything else that he told you either in the
 20 truck on the way over or while you were sitting in --
 21 waiting to be seen, about his symptoms or about what
 22 his problems were or what his complaint was?
 23 A. Just that it was different. It was a
 24 different pain, and he was in pain.
 25 Q. And so from what you have said now -- and

Page 94

1 like I said, you can tell me if this is wrong or
 2 there's other information. Up to this point, he said
 3 he had pain in his head. You said in the back of his
 4 head --
 5 A. Back of his neck.
 6 Q. Back of his neck and up in his head, and it
 7 was different. You said that. And he had been
 8 nauseous, vomited the night before?
 9 A. Yes. Well, partially, yes. It started in
 10 the back of his neck and radiated up the back of his
 11 head to the top of his head. And he had been nauseous
 12 the night before.
 13 Q. All right. And any other symptoms that he
 14 told you about of any kind?
 15 A. Not that I can think of right now.
 16 Q. Anything that you could see in terms of
 17 observations, even if he didn't tell you, for example,
 18 if he was dizzy and fell over. Even though he didn't
 19 tell you he was dizzy, you could see he was dizzy. Or
 20 if he fainted, he didn't tell you "I'm fainting," but
 21 you saw him faint. Anything like that where you
 22 observed something about him that you would have
 23 considered a symptom or some problem that he was
 24 having even if he didn't tell you?
 25 A. You could just see the pain in his eyes.

Page 95

1 Just looked like he was in pain.
 2 Q. Okay. Anything else?
 3 A. No.
 4 Q. So then what happened next after you were
 5 waiting for a while?
 6 A. They called us into the room.
 7 Q. Did you both go into the room?
 8 A. Yes.
 9 Q. And did someone take you into the room?
 10 A. Yes.
 11 Q. Do you remember who that was?
 12 A. No.
 13 Q. Man or woman?
 14 A. A woman, I believe.
 15 Q. And what happened then?
 16 A. Then we waited some more.
 17 Q. And how long did you wait while you were in
 18 the room?
 19 A. It seemed like quite a while. You know, it
 20 may have been 10, 15 minutes.
 21 Q. And then were you --
 22 A. Sorry. Can I back up?
 23 Q. Sure.
 24 A. When we got in the room, someone took a
 25 little bit more history, you know, asked what was

Page 96

1 wrong, why we were there.
 2 Q. So was this when you got to the room or
 3 before you got to the room?
 4 A. When we got in the room.
 5 Q. All right. And someone -- and who was this,
 6 a man or a woman?
 7 A. A woman.
 8 Q. Did you know what her position was?
 9 A. No.
 10 Q. Did you know if she was a doctor or a nurse?
 11 A. I didn't know. I assumed she was a nurse.
 12 Q. Why did you assume that?
 13 A. I know when I go to the doctor, usually the
 14 nurse takes you in there and asks you questions.
 15 Q. All right. Do you remember what questions
 16 this person -- assuming it was a nurse, what questions
 17 this person asked?
 18 A. She asked, you know, where -- why we were
 19 there.
 20 Q. And who answered? Did Mr. Allen answer, or
 21 did you answer?
 22 A. Todd, yes. Todd did all the talking.
 23 Q. And same question: Can you remember the
 24 specific question she asked and the specific answers
 25 that Mr. Allen gave, or do you just have a general

27 (Pages 93 to 96)

Kimberly Alen

Deposition

April 12, 2005

Page 97

1 **recollection of what was said?**

2 A. I have a specific recollection of what Todd
3 said.

4 **Q. And what did he say?**

5 A. He told her again that the pain came from
6 the back of the neck to the top of his head and that
7 it was different than all the other visits, in that it
8 wasn't his jaw that was hurting.

9 **Q. Did he say anything else about his symptoms,
10 anything about his symptoms or what --**

11 A. That he had been throwing up all night.

12 **Q. Anything else?**

13 A. That he -- you know, he had been taking the
14 medicine, but he didn't know -- or some medicine, and
15 that he didn't know if it had been working because he
16 had been throwing up all night.

17 **Q. Did this nurse do anything besides ask
18 questions, do any exam, do anything like that?**

19 A. I don't recall. I was more focused on Todd.

20 **Q. So, for example, do you recall if anyone
21 took his blood pressure or took his temperature or did
22 any physical exam?**

23 A. I was really focused on Todd, because I
24 realized that it was different and more -- it was
25 different. So I wasn't paying too much attention

Page 98

1 to --

2 **Q. And how long was this --**

3 A. -- this person.

4 **Q. Sorry. How long was this nurse -- and this
5 was in the room? After you had been taken to the
6 room, this person came and talked to Todd?**

7 A. This was the first person that brought us to
8 the room, yeah.

9 **Q. Okay. All right. How long did that person
10 talk with you?**

11 A. It was very short. Five minutes, tops.

12 **Q. And from what you said so far, all the
13 conversation was between this nurse and Mr. Allen?**

14 A. Correct.

15 **Q. Did she ask you any questions?**

16 A. Did she ask me?

17 **Q. Yes.**

18 A. Not that I recall.

19 **Q. Did you volunteer any information?**

20 A. No.

21 **Q. All right. And what happened after that?
22 Did this nurse leave?**

23 A. She left.

24 **Q. Did she tell you anything about what was
25 going to happen next?**

Page 99

1 A. That someone would be in to see us shortly.

2 **Q. Okay. And what happened next? You waited
3 for a while?**

4 A. We waited for a while longer.

5 **Q. And then what happened?**

6 A. And then someone did come in to see us.

7 **Q. Who was this?**

8 A. I assumed it was a doctor.

9 **Q. Okay. And do you remember a name?**

10 A. I do not.

11 **Q. Was it a man or a woman?**

12 A. A woman.

13 **Q. Okay. And do you remember what they looked
14 like? Would you be able to describe the person?**

15 A. Vaguely. I mean, she was a woman. She was
16 taller. That's all I can remember.

17 **Q. Well, how was she dressed? Do you remember
18 what she was wearing?**

19 A. I can't say specifically, no.

20 **Q. Okay. And you say you assumed it was a
21 doctor. Why did you assume it was a doctor?**

22 A. When you go to the emergency room, you would
23 assume, my past experience, that you see the doctor.

24 **Q. Okay. Did this woman say she was a doctor?**

25 A. I don't believe she ever stated.

Page 100

1 **Q. Okay. Do you recall anything about how she
2 identified herself, in terms of what her name was or
3 what her position was with the hospital?**

4 A. When she walked in, she said hi, I'm such
5 and such.

6 **Q. You just don't --**

7 A. I don't remember that.

8 **Q. Did she then question Mr. Allen?**

9 A. She did question Mr. Allen.

10 **Q. Same question as before. Did she question
11 you, or was she talking primarily to Mr. Allen?**

12 A. To Todd.

13 **Q. Okay. Did she ask you any questions?**

14 A. Not that I recall, no.

15 **Q. Did you volunteer any information?**

16 A. No.

17 **Q. Do you remember the specific questions she
18 asked Mr. Allen?**

19 A. A lot of the -- could you repeat it, please?

20 **Q. Yes. I'm just trying to get a sense of
21 whether you can remember specifically the specific
22 words she used in the questions that she asked or
23 whether you're just going to be able to tell me
24 generally what she was asking about and what Todd was
25 saying back.**

28 (Pages 97 to 100)

Kimberly Alen

Deposition

April 12, 2005

Page 101

1 A. I most remember what Todd was saying back to
2 her.
3 **Q. Okay. So you can't remember the specific**
4 **questions she asked, but she asked some questions of**
5 **Todd about his condition?**
6 A. She did ask some questions on how he was
7 feeling.
8 **Q. Okay. And what did Todd say?**
9 A. Todd again reiterated where the pain was
10 coming. It was coming from his neck up to his head.
11 He had to tell her his whole prior history from the
12 car accident up, because they did not have his chart,
13 medical chart.
14 **Q. So your recollection is that this person who**
15 **was talking didn't have Mr. Allen's chart?**
16 A. She stated they didn't have it. And she
17 just said --
18 **Q. Did she say why?**
19 A. -- she didn't have it. She did not say why,
20 but she didn't have his, you know, prior history and
21 everything. So Todd explained how he had been hit by
22 a car, he had been in the emergency room, he had been
23 to the doctors for a specific type of pain in his jaw,
24 but that this visit was different. It wasn't the same
25 pain.

Page 102

1 **Q. So they talked about his prior history. You**
2 **said --**
3 A. He talked about it.
4 **Q. She said she didn't have the chart. And so**
5 **Mr. Allen said, well, I have this prior history, and**
6 **started telling her about the prior history of the --**
7 A. She asked about it.
8 **Q. She asked about it. And so he then talked**
9 **about it, gave her information about that?**
10 A. Uh-huh.
11 **Q. Okay. And then talked about this pain. You**
12 **said this pain was different than that?**
13 A. Correct.
14 **Q. All right. And did he describe where it was**
15 **on his head and neck?**
16 A. Yes, he did.
17 **Q. Did he show, in terms of --**
18 A. Yes. He used his hands.
19 **Q. -- like you have done here today, like this**
20 **(indicating)?**
21 A. Yes. He used his hands and specifically
22 said.
23 **Q. What else did he tell her in terms of his**
24 **symptoms or his complaints or how he was feeling?**
25 A. I believe I have said it. I think -- you

Page 103

1 know, I told you he was nauseous.
2 **Q. He talked about -- well, let me be careful.**
3 **He said he had been -- had nausea the night before?**
4 A. The previous night, yeah, and he hadn't
5 slept.
6 **Q. Okay. That he didn't sleep?**
7 A. Right.
8 **Q. And then you have gone through and described**
9 **it. He had this pain in his neck and his head.**
10 A. Uh-huh.
11 **Q. Anything else that he said?**
12 A. Not that I can think of right now.
13 **Q. And if you remember anything, I'm trying to**
14 **get any other symptoms that he talked about, whether**
15 **he said, I have a ringing in my ears or I have a rash**
16 **on my arm, anything that he told her about his**
17 **physical condition that you can recall. Anything**
18 **else?**
19 A. Nothing that I can think of right now, no.
20 **Q. Did he say anything about when he had thrown**
21 **up, in terms of timing? We talked about the night**
22 **before. You didn't remember exactly. Was it**
23 **1:00 o'clock in the morning, 2:00 o'clock, 3:00**
24 **o'clock? He didn't tell you those details. Did he**
25 **give any of those details to this person that he was**

Page 104

1 **talking to?**
2 A. No.
3 **Q. Did he say how many times he had thrown up?**
4 A. Thought he just said several.
5 **Q. Did he say anything about how much**
6 **medication he had taken or how often he had taken it?**
7 A. No, not that I remember.
8 **Q. And same question as before, now that you**
9 **have had to chance to think about this. During the**
10 **course of this conversation, did you offer any**
11 **information?**
12 A. The conversation between Todd and the
13 person?
14 **Q. Yes.**
15 A. No, not that I -- not that I can remember.
16 Could we take a break?
17 MR. GUARINO: Sure. Actually, I should have
18 said "off the record," because I have to look at these
19 questions here.
20 (Recess taken.)
21 MR. GUARINO: Back on record.
22 **Q. How long did this visit with the second**
23 **person who saw you last?**
24 A. A little bit longer than the first, maybe
25 ten minutes.

29 (Pages 101 to 104)

Kimberly Alen

Deposition

April 12, 2005

Page 105

1 Q. Okay. And anything else you can recall, in
2 terms of the complaints that Mr. Allen voiced or
3 symptoms that he talked about, that you haven't talked
4 to up to this point?

5 A. No.

6 Q. And in your mind, am I correct in
7 understanding that as far as your recollection is, is
8 that Mr. Allen would have told both the first person
9 that he talked to, the person you thought was a nurse,
10 and the second person, the person that you thought was
11 a doctor, would have told both of them about this pain
12 in his neck and head?

13 A. Correct.

14 Q. And would have told both of them about his
15 nausea and vomiting?

16 A. Correct.

17 Q. And would have told both of them your
18 understanding that this was different than his prior
19 pain?

20 A. Correct.

21 Q. And just so I -- it sounds like you don't
22 recall talking or saying anything to either one of
23 them, in terms of giving them more information?

24 A. I don't recall, no.

25 Q. All right. Was there any discussion with

Page 106

1 either the first, the nurse, or the second person that
2 Mr. Allen talked to about the fact that he was in the
3 chronic pain program?

4 A. The second one.

5 Q. And what did they discuss about that?

6 A. Well, like I said, they didn't have his
7 chart, so he explained that he was in the chronic pain
8 program and that he had just received his refills the
9 prior day.

10 Q. Okay. And did they talk about what
11 medications he was on?

12 A. I believe so, yes.

13 Q. Anything else that they talked about in
14 terms of the chronic pain program?

15 A. Not that I recall, no.

16 Q. What happened next?

17 A. She said that she would give him a shot for
18 nausea and that he would -- and then give us something
19 to take home, for him to take home; and that if the
20 pain persisted or became worse, to see a doc -- you
21 know, see the doctor or come back.

22 Q. I just want to make sure I'm following this.
23 She prescribed a shot of something for the nausea?

24 A. Phenergan, if I have the name right, yes.

25 Q. Did this second person give him the shot?

Page 107

1 A. No.

2 Q. And then she said she was going to give him
3 some more of the Phenergan or --

4 A. A prescription for it.

5 Q. A prescription, okay. And what was the
6 third thing she said about if --

7 A. If it gets worse.

8 Q. To do what?

9 A. To come back.

10 Q. And then did this second person then leave?

11 A. Yes.

12 Q. Did you ever see that person again while you
13 were at ANMC?

14 A. No.

15 Q. Okay. What happened next?

16 A. We waited some more, and then the first
17 person came back, gave Todd the shot, and gave us the
18 prescription and our papers to go.

19 Q. This was the person that you talked to the
20 first time, the nurse?

21 A. Right.

22 Q. It was the same person, then, came back and
23 gave you the shot?

24 A. Yes.

25 Q. Did you have any further discussion with

Page 108

1 this nurse about Mr. Allen's symptoms or what he was
2 complaining about or anything like that?

3 A. No. She just talked about the shot and said
4 it would make him drowsy, which I believe the
5 doctor -- or whoever it was, that one person -- second
6 person also said, you know, the shot -- this will make
7 you drowsy.

8 Q. Anything else you can recall this nurse who
9 was giving him the shot, anything else she said?

10 A. Not that I remember right now, no.

11 MR. GUARINO: All right. I would like to
12 have this marked as an exhibit.

13 (Exhibit 18 marked.)

14 BY MR. GUARINO:

15 Q. If you could take a look at this, Ms. Allen.
16 Do you recognize this document?

17 A. Yes.

18 Q. There's some hand notes on it. Are those
19 your hand notes?

20 A. They're mine and Todd's.

21 Q. And Todd's, okay. Let me see if I can go
22 through this. On the first page -- well, first of
23 all, did you get this document from someone at ANMC?

24 A. Someone, yes.

25 Q. Was it the day that you went with Todd to

30 (Pages 105 to 108)

Kimberly Alen

Deposition

April 12, 2005

Page 109

1 the hospital?
 2 A. Yes.
 3 Q. And you got it before you were released?
 4 A. Yes, at some point before we were released.
 5 Q. And the writing up across the top on the
 6 first page, is that your handwriting or Todd's?
 7 A. Todd's.
 8 Q. And can you read that? It reads, to me:
 9 "April 18, 2003, visit to ER." Is that what it looks
 10 like?
 11 A. Yes.
 12 Q. And then it's something. Is it maybe "at"?
 13 A. Yeah.
 14 Q. And I apologize for the copy. This is the
 15 way it was produced to us. "At" and then it looks
 16 like 7:00." I'm assuming that means 7:00 a.m. That
 17 would have been about the time you went?
 18 A. Correct.
 19 Q. And then that next word, is that "pain"?
 20 A. Yes.
 21 Q. "Pain all night"?
 22 A. Uh-huh.
 23 Q. And then it looks to me like: In R, period,
 24 ear?
 25 A. Yes.

Page 110

1 Q. And then I can't read that next. Do you
 2 know what the next --
 3 A. Bad.
 4 Q. Bad. Okay.
 5 A. You're missing the top.
 6 Q. Top of the B on that last word. Okay. So
 7 best reading of it now: "April 18, 2003, visit to ER
 8 at 7:00," and if it's consistent with your
 9 recollection, it would be 7:00 a.m. in the morning?
 10 A. Right.
 11 Q. "Pain all night in right ear bad."
 12 A. Right.
 13 Q. Did you see Mr. Allen write this?
 14 A. I did not see him write it, no.
 15 Q. Did he write this after the visit to ANMC?
 16 A. Yes.
 17 Q. Could have written it while you were still
 18 there at the hospital, but he didn't write it before
 19 he went to the hospital, did he?
 20 A. Correct.
 21 Q. All right. So he wrote this down. How
 22 about down below, the "A Phenodryn," the way it's --
 23 A. That's me.
 24 Q. That's you. That's your phonetic spelling
 25 of what you thought the drug was that they gave him?

Page 111

1 A. Right. I was going to look it up.
 2 Q. It's closer than I would have gotten the
 3 first time.
 4 A. I was going to see what it was, try and look
 5 it up.
 6 Q. All right. And do you remember, when you
 7 wrote that, was that after you left the hospital, or
 8 did you write it while you were still at the hospital?
 9 A. I believe I -- I don't know for sure.
 10 Q. And then there's some further writing on the
 11 last page of this document. Can you tell me whose
 12 writing or printing that is?
 13 A. It's both.
 14 Q. Okay. Which is yours and which is
 15 Mr. Allen's?
 16 A. The "Aphenodrene" -- I'm not positive on
 17 that. It looks like it could be either. But the
 18 "nausea, med" -- I'm thinking that's "med," is Todd.
 19 "Shot, tablets" is me. "Dr. Fiery," Fearey, whatever,
 20 that's me. The date is Todd.
 21 Q. And the Dr. Fiery or Fearey, who was that
 22 referring to?
 23 A. I couldn't say.
 24 Q. All right. And the date, you don't know
 25 who --

Page 112

1 A. I believe Todd wrote that.
 2 Q. And same question: Do you know if this
 3 writing was at the hospital or after you left?
 4 A. It was after we were discharged.
 5 Q. Okay. And let's go back, because we left
 6 off at the point where the nurse came back to give you
 7 the shot. And then what happened next? After
 8 Mr. Allen got the shot of Phenergan, what happened
 9 then?
 10 A. They gave him the shot and the papers. We
 11 were discharged. Then we went to -- we actually went
 12 to the cafeteria to go eat, because it was morning.
 13 We were hungry. And at that -- went and ate there.
 14 Ate a little bit. Todd ate a lot, a lot of salty
 15 foods. But he was real lethargic. And I just figured
 16 it was the shot they just gave him.
 17 Q. While he was in the cafeteria with you, did
 18 he make any other complaints about his symptoms in
 19 terms of how he was feeling?
 20 A. He said he felt better.
 21 Q. Anything else that he said about his
 22 symptoms, either different than what he had said
 23 before? Or like you said better. Anything?
 24 A. No. He said he felt better.
 25 Q. Okay. How long were you in the cafeteria?

31 (Pages 109 to 112)

Kimberly Alen

Deposition

April 12, 2005

Page 113

1 A. Maybe a half hour.

2 **Q. And I'm not holding you to the exact time on**
3 **this. I'm just trying to get a sense of whether you**
4 **spent all day there or --**

5 A. Sure.

6 **Q. So you were there long enough to eat, and**
7 **then what did you do?**

8 A. At the same time the prescription was being
9 filled, so we could pick the prescription up.

10 **Q. You picked up the Phenergan prescription**
11 **from ANMC?**

12 A. Right.

13 **Q. All right. And then what happened?**

14 A. And then -- sorry. Then we -- we left. We
15 left the hospital, and we were going to meet Chuck, a
16 friend of Todd's, Chuck Totemoff.

17 **Q. Was that the friend who had gotten the pain**
18 **medications?**

19 A. No. A different friend. We were going to
20 go to Sam's Club and go shopping. And he had the
21 Sam's Club card. So that's why we had called him and
22 set it all up. Met with him. And we went shopping at
23 Sam's Club.

24 **Q. Let me ask you: Who drove away from ANMC to**
25 **Sam's Club?**

Page 114

1 A. I did. I drove that whole day.

2 **Q. Okay. And you went to Sam's Club. And how**
3 **long were you there?**

4 A. Maybe half hour, 45 minutes, estimation. In
5 the whole time we were there, Todd was real, even more
6 lethargic to the point, you know, he was -- you know
7 those swings that you put on the front porch that you
8 could sit on and swing, he was laying down on one of
9 those. He would, like, doze off and take a nap.
10 Chuck and I did our shopping and got out of there real
11 quick, since we were in there for -- only there for a
12 weekend. We had to do it.

13 **Q. So you finished shopping, and then where did**
14 **you go next?**

15 A. Then we went back to the Microtel, unloaded
16 the truck, went upstairs. And by that time he was
17 just real -- not cognitive, just real tired, real, you
18 know, tired.

19 **Q. Other than tired, was he in pain? Was he**
20 **complaining of other symptoms, being dizzy, being**
21 **light-headed, anything like that?**

22 A. No.

23 **Q. So just he felt -- did he say, "I feel**
24 **tired"?**

25 A. Yeah. He said, "I'm tired."

Page 115

1 **Q. Okay. So what happened next?**

2 A. So we unloaded the truck and went upstairs.
3 I told him I wanted to go to REI to get some pants,
4 because at that time I was pregnant. I said, "I need
5 some clothes that fit." He wanted to go with me, but
6 he was so tired. I said, well, you just stay here,
7 take a nap. And then when I get back, then we'll go
8 pick up the painting that he had picked out in Palmer.

9 **Q. From this point, from the time you left ANMC**
10 **up until this time when you're going out again to REI,**
11 **aside from the shot that he received at ANMC, had he**
12 **taken any more of the Phenergan?**

13 A. Phenergan?

14 **Q. Yes.**

15 A. Not that I'm aware of.

16 **Q. Had he taken any other medication?**

17 A. Not that I was aware of, no.

18 **Q. Okay. I'm sorry. I'm just trying to follow**
19 **this along.**

20 A. That's okay.

21 **Q. So he was tired. You were going to go to**
22 **REI, and he felt --**

23 A. Right. So I went to REI. I left him there.

24 He said, "Okay, I'll take a nap." And by the time --

25 I mean, we were up there for maybe, I don't know, 15,

Page 116

1 20 minutes, just hanging out. And then by the time I
2 left for REI, he was asleep.

3 So I left, went to REI. Then I went to
4 McDonald's, got food for both of us, and came home.
5 And he was still sleeping. He was snoring, really
6 loud snore.

7 **Q. And I apologize to interrupt you, but it's**
8 **easier if I take it in bits at a time so I don't have**
9 **to come back and try and remember what you said,**
10 **because I'm not taking it down as fast as he is. When**
11 **you left to go to REI, about what time was that?**

12 A. I can't say for sure. It was --

13 **Q. Was it still in the morning, or was it in**
14 **the afternoon now?**

15 A. No. It was more early -- well, late
16 morning, early afternoon.

17 **Q. And how long were you gone at REI and**
18 **McDonald's?**

19 A. Forty-five minutes tops, not that long.

20 **Q. Where is the Microtel hotel that you were**
21 **staying at?**

22 A. It's on International and Minnesota, in that
23 area.

24 **Q. Did you go anywhere else other than to REI**
25 **and to McDonald's?**

32 (Pages 113 to 116)

Kimberly Alen

Deposition

April 12, 2005

Page 117

1 A. No.
 2 **Q. And did you buy some things at REI?**
 3 A. No. I didn't see anything I liked.
 4 **Q. And then you went to McDonald's and you**
 5 **bought some food there?**
 6 A. Right.
 7 **Q. And was it just you or was anyone else with**
 8 **you?**
 9 A. Just me.
 10 **Q. And Mr. Allen was back at the hotel alone**
 11 **sleeping?**
 12 A. Correct.
 13 **Q. As far as you know.**
 14 A. He was alone.
 15 **Q. All right. So you get back. And when you**
 16 **get back, did you know what time it was -- or do you**
 17 **know what time it was when you got back?**
 18 A. I know it was early afternoon still.
 19 **Q. Okay. And you said you saw Mr. Allen was**
 20 **sleeping but he appeared to be snoring?**
 21 A. He was snoring, yes.
 22 **Q. Okay. And you said -- I think you said**
 23 **loudly?**
 24 A. Right. And Todd snored normally but not --
 25 not as loud as he was snoring. I just attributed it

Page 118

1 to, you know, we -- he was up the whole -- because
 2 this was a Saturday. He was up Friday, drove from
 3 Valdez to Anchorage, was up all night. And then the
 4 hospital gave him a shot, which they stated would, in
 5 fact, make him drowsy. So I thought, well, he needs
 6 his sleep. He's tired. That's why he's sleeping so
 7 hard.
 8 **Q. And let me back up with that point. You had**
 9 **driven from Valdez to Anchorage the prior day, and**
 10 **then Mr. Allen told you he had been up the prior --**
 11 **Friday night he couldn't sleep, and then Saturday you**
 12 **went to ANMC.**
 13 A. Morning.
 14 **Q. Morning. And then this is the afternoon?**
 15 A. Correct.
 16 **Q. What about the prior day, that Thursday?**
 17 **Had Todd been working that Thursday?**
 18 A. I can't say with certainty, but I don't
 19 think so. I think it was his week off.
 20 **Q. All right.**
 21 A. And that generally is Tuesday to Tuesday.
 22 **Q. Okay. So you thought that given the trip up**
 23 **from Valdez, the fact that he had been up the night**
 24 **before, he was just -- and with the shot, that he was**
 25 **just tired. Is that --**

Page 119

1 A. That's an accurate description.
 2 **Q. Okay. And you noticed that he was snoring**
 3 **and it appeared to be louder than he normally snored**
 4 **but you attributed that to the same factors?**
 5 A. To being so tired.
 6 **Q. Anything else that you saw about him that**
 7 **was unusual?**
 8 A. No.
 9 **Q. Okay. All right. So what happened next,**
 10 **after you came back and he was sleeping and snoring?**
 11 A. He was sleeping and snoring. And in the
 12 Microtel rooms, there's -- you walk in. There's a
 13 couch, and then there's a little partition thing. And
 14 then there's a bed. And he was on the bed. So I sat
 15 on the couch and ate my food and left his there for
 16 when he got up. And then went over and tried to wake
 17 him up, you know, to let him know his food was there.
 18 And he didn't wake up, so I thought, well, I will just
 19 let him sleep.
 20 **Q. When you say he didn't wake up, did he talk**
 21 **to you and say, no, I'm still tired? Did he move at**
 22 **all in response to you, or was he just --**
 23 A. No. I didn't try that hard to wake him up.
 24 I just said, "Todd. Todd." You know, he was tired.
 25 I didn't want to wake him up, if he was tired.

Page 120

1 **Q. And that's what I'm trying to find out. You**
 2 **sort of called for him --**
 3 A. I didn't push or try --
 4 **Q. -- and he didn't wake up. Did you touch him**
 5 **and try and shake him?**
 6 A. No.
 7 **Q. All right. Then what happened next?**
 8 A. Then I laid down next to him on the bed and
 9 watched TV.
 10 **Q. And I realize -- do you remember what you**
 11 **watched?**
 12 A. I do not.
 13 **Q. Do you know how long you watched TV?**
 14 A. Hour, hour and a half or so. A while. Just
 15 relaxing.
 16 **Q. Then what happened next?**
 17 A. Well, then I tried to wake him up, because
 18 we were going to go get the painting that he had
 19 picked out out in Palmer. But it closed at 5:00 so I
 20 figured, you know, leave by 3:00 to get there, get it
 21 all taken care of.
 22 So I tried to wake him up. He didn't wake
 23 up. I didn't, you know, like forcibly shake him. I
 24 just, you know, again, tried to wake him up. And he
 25 didn't wake up. I thought, well, crap. Okay. So

33 (Pages 117 to 120)

Kimberly Alen

Deposition

April 12, 2005

Page 121

1 waited a little bit longer.

2 And then -- and then my hand was on his
3 chest, and I noticed, you know, it was irregular. It
4 was -- you know, you could feel some of his heart
5 going up and down.

6 **Q. The heart was irregular or the breathing was**
7 **irregular?**

8 A. His breathing and the -- you know, it wasn't
9 a normal up and down. And so that -- I mean, that
10 just scared me. So then I really tried to wake him up
11 and shake him. And he was dead weight. And so when I
12 tried to lift him up, thinking if I can lift him up, I
13 would wake him up. I lifted him up and rolled him
14 over, and blood came out of the side of his mouth.

15 **Q. He had been sleeping on his stomach?**

16 A. Back.

17 **Q. On his back. And you tried to roll him over**
18 **onto his stomach?**

19 A. Right side.

20 **Q. And you saw --**

21 A. I was trying to pick him up, is what I was
22 trying to do. When I picked him up and the blood came
23 out of the right side of his mouth, that's when I
24 called 911.

25 **Q. Okay. And he didn't wake up at any time**

Page 122

1 during this process?

2 A. No.

3 **Q. Okay. And when you called 911, you just**
4 **talked to whoever it was on the other end of the line**
5 **and said your husband was in trouble?**

6 A. I said, "You need to get here right" -- I
7 said, "You need to get here right now. My husband is
8 not breathing. There's blood coming out of his
9 mouth."

10 **Q. And up to this point, no one else has been**
11 **in the room, no one else has seen anything that's gone**
12 **on. It's just you and Mr. Allen?**

13 A. Correct.

14 **Q. And then is the next thing that happens the**
15 **emergency team comes?**

16 A. Well, the next thing, they tried to walk me
17 through CPR.

18 **Q. Over the phone?**

19 A. Yes.

20 **Q. And did you attempt to do CPR?**

21 A. Yeah, I did. She told me to get him on a
22 flat surface. I said, "He is. He's on the bed."
23 They said, "No. He has to be on a hard flat surface."

24 So I had to pull him off the bed to the
25 floor. And he was dead weight, so it was really hard.

Page 123

1 I had to push the bed all the way over and pull him
2 off and get him on the floor. And by that time -- I
3 had just started CPR -- the police were knocking on
4 the door to be let in, and then they took over.

5 **Q. Once they took over, you weren't providing**
6 **any care after that?**

7 A. Correct.

8 **Q. Do you remember: When they came in, did you**
9 **talk to them and explain to them what happened?**

10 A. Yeah. They asked me what happened.

11 **Q. And here's where I'm -- if you can remember**
12 **what you told them, I would be interested in hearing**
13 **it. But I would understand if you said I just don't**
14 **remember at the time, because things were happening so**
15 **quickly. Do you remember specifically what you told**
16 **them about the events?**

17 A. I remember specifically that I had told
18 them -- I missed -- sorry. I had -- can we back up a
19 minute?

20 **Q. Sure.**

21 A. Because I had actually -- the time that I
22 had tried to wake him up, I was concerned so I called
23 ANMC.

24 **Q. And if we back up, which time are we talking**
25 **about? Let me ask you: Was it before or after you**

Page 124

1 went to REI?

2 A. After.

3 **Q. So you came back.**

4 A. Came back.

5 **Q. And you said --**

6 A. And then I had first tried to wake him up
7 and say, "Your food's here. Are you hungry? Do you
8 want to eat?" It wasn't that time. It was the next
9 time after that.

10 **Q. And just so I can place it, as I understand**
11 **it, you came back from REI. You tried to wake him up,**
12 **but you didn't really do a lot. You just sort of**
13 **called to him, and he didn't wake up so you thought**
14 **you would let him sleep.**

15 A. Correct.

16 **Q. And then you sat down and ate your meal?**

17 A. Correct.

18 **Q. And then after that you tried to wake him up**
19 **a second time?**

20 A. Right.

21 **Q. And again --**

22 A. And that's when I thought, well, this isn't
23 normal. So that's when I called ANMC. It was their
24 direct line, and I asked to speak to a nurse.

25 **Q. Now that you got -- so you decided that you**

34 (Pages 121 to 124)

Kimberly Alen

Deposition

April 12, 2005

Page 125

1 wanted to talk to someone at ANMC. Why? Because you
2 couldn't wake him up?

3 A. Yeah. I was concerned that I couldn't wake
4 him up, and I just wanted to make sure that, you
5 know -- you know, should I call an ambulance or should
6 I -- you know, is this considered normal? Is this --
7 what should I look for?

8 Q. And the number that you called, was it the
9 general number for ANMC?

10 A. Yeah, I believe so.

11 Q. Did you use the hotel phone?

12 A. I used my cell phone.

13 Q. And so up to that point that day, that would
14 have been the only phone call you had made to ANMC?

15 A. Yes.

16 Q. Because you didn't call -- you said you
17 didn't call before you went there in the morning.

18 A. Right.

19 Q. Then you were there in the morning, and then
20 you were out doing errands and then you came back to
21 the motel and then you went back out to do an errand.
22 And now you come back and you're making a call to
23 ANMC. So that's the first call you would have made
24 that day?

25 A. Correct.

Page 126

1 Q. All right. And is that the only call you
2 made that day to ANMC?

3 A. Yeah, that I can remember right now.

4 Q. And do you remember: Did you get like a
5 receptionist, or did you get a medical person when you
6 called?

7 A. No. I believe it was the receptionist. And
8 you just -- or it was a person. And then I just
9 asked: "Can I speak to a nurse, please?" And I was
10 transferred to the emergency room.

11 Q. And how do you know you were transferred to
12 the emergency room?

13 A. Because the person on the other end said
14 that they were a nurse. Because I asked, you know:
15 "Are you a nurse?"

16 Q. So when you got transferred, you asked the
17 person on the other end: "Are you a nurse?"

18 A. Correct.

19 Q. And what did they say?

20 A. Said, "Yes, I'm a nurse in the emergency
21 room."

22 Q. And did they give you a name?

23 A. No.

24 Q. Was it a man or --

25 A. Well, they may have, but I don't remember.

Page 127

1 Q. Okay. Was it a man or a woman?

2 A. A woman.

3 Q. Okay. And so as we sit here today, other
4 than her voice, you don't know this nurse's name or
5 position?

6 A. No.

7 Q. Okay. All right. And then again, as best
8 as you can recall, what did you tell this person?

9 A. I told this person that we had been in the
10 emergency room that morning. My husband had come in
11 complaining of the pain in the back of his neck, up to
12 the top of his head.

13 Q. And did you tell this person that whole
14 story, about what the pain was and where it was?

15 A. Yes. I wanted her to have as much
16 information as possible to give me that information.

17 Q. What else did you tell this person about?

18 A. That they gave him a shot of Phenergan,
19 Phenergan or whatever it is.

20 Q. Did you tell this person about the nausea
21 and vomiting?

22 A. The night before, yeah. And said, you know,
23 "I came home, and he's sleeping really hard." Said,
24 "He's breathing, he's snoring, but he's just sleeping
25 really hard, and I can't wake him up. Is this right?

Page 128

1 Is this okay?"

2 Q. And when you say you told this person that
3 you couldn't wake him up, did you explain what you had
4 done to try and wake him up? In other words, the
5 first time you told me you tried to wake him up you
6 said, "I just called him and said, Todd, you want to
7 wake up."

8 A. Right. Yeah.

9 Q. That's a little different than going over
10 and shaking someone and they still won't wake up. Did
11 you give the person on the other end of the phone any
12 indication of how hard it was to wake him up or what
13 you had done to try and wake him up?

14 A. I can't say for sure.

15 Q. Okay. And in terms of what Mr. Allen was
16 doing at that moment, you said you tried to wake him
17 up but he wasn't waking up. And what else did you
18 tell them? Did you tell them about the snoring?

19 A. Yes. I said that, didn't I?

20 Q. That's what I'm asking you. Did --

21 A. Yeah. Yeah. I said he was snoring loudly
22 and, you know, should I be concerned? Should I bring
23 him in to the hospital, or is this something that is
24 normal with the shot and him being so tired and being
25 through everything he's just been through in the day

35 (Pages 125 to 128)

Kimberly Alen

Deposition

April 12, 2005

Page 129

1 and a half previous?

2 **Q. All right. And what did this person say?**

3 A. She said that if he was breathing, he was

4 okay.

5 **Q. Did she say anything else?**

6 A. Not that I remember.

7 **Q. And so to your -- in your recollection, and**

8 **I'm not saying you used these exact words, but your**

9 **memory is you told this person about the prior visit**

10 **to the ER. You told him about Mr. Allen's symptoms,**

11 **in terms of his pain in the neck and in his head. You**

12 **told this person that he had nausea and vomiting, and**

13 **you told them that he had received a shot of**

14 **Phenergan. You told them the name of the medication?**

15 A. Yes.

16 **Q. The best you knew it at the time?**

17 A. Right.

18 **Q. And that you couldn't wake him up and he was**

19 **snoring?**

20 A. Right.

21 **Q. Did you say anything else in terms of**

22 **symptoms or complaints or anything like that?**

23 A. Not that I...

24 **Q. Did this person -- let's assume it was a**

25 **nurse. Did this nurse ask you any questions?**

Page 130

1 A. No, not that I remember, because I basically

2 told her all --

3 **Q. So you would have presented all this. It**

4 **wasn't her asking you follow-up questions to get more**

5 **information. It was just you telling her all this.**

6 A. It was like a nurse hotline. You know, you

7 call. I wanted -- I wanted her to be able to give me

8 valid, good information, so I gave her as much

9 information as I had.

10 **Q. And when you were done, did she -- she said**

11 **as long as he was breathing, it's okay?**

12 A. As long as he was breathing, yeah. As long

13 as he's breathing, he's okay. You know, just continue

14 to monitor him. And then it made me feel better. And

15 I thought, well, okay, and that was that.

16 **Q. I'm just trying to be careful. Did she ask**

17 **any other questions to get any other information, like**

18 **where you were or what your phone number was or what**

19 **your name was? Did she get your name?**

20 A. I don't believe so, no.

21 **Q. Did you tell her who you were, your name or**

22 **your husband's name?**

23 A. Not that I remember.

24 **Q. And did she ask any of those questions: Who**

25 **are you, where are you, anything like that?**

Page 131

1 A. Not that I remember.

2 **Q. Okay. Any other questions? I mean, because**

3 **the way I'm hearing it right now is you called. This**

4 **person says, I'm a nurse in the ER, and you say,**

5 **here's my problem. And you proceed to give all the**

6 **information. And then she tells you, well, as long as**

7 **he's breathing, he's okay. Just keep an eye on him.**

8 A. Correct.

9 **Q. Did she say anything else?**

10 A. Not that I recall, no.

11 **Q. And after she finished that, did you say**

12 **anything else?**

13 A. I said, "Okay. Thank you."

14 **Q. And then you hung up the phone?**

15 A. Right.

16 **Q. All right. And is there anything else that**

17 **you can tell me that I can use to figure out who this**

18 **person is? We don't know this person's name.**

19 A. I really wish I could.

20 **Q. And we don't know -- you recall them**

21 **saying -- and it's a she saying that they were a**

22 **nurse?**

23 A. Yeah.

24 **Q. Anything else? I can't think of anything,**

25 **but I'm just --**

Page 132

1 A. No. I really wish I could, though.

2 **Q. And have you gotten any information at any**

3 **time since then that's told you who this person is?**

4 A. No.

5 **Q. All right. After you hung up the phone,**

6 **what happened next?**

7 A. That was when we -- you know, I watched TV

8 some more. And watched TV some more. And I was

9 laying there with him. And I noticed his breathing

10 was different and his chest felt different. So then

11 that's when I really tried to wake him up and tried to

12 lift him up. And he was dead weight. So when I

13 lifted his left side to roll him over, that's when the

14 blood came out.

15 **Q. And where did the blood come out of?**

16 A. Mouth.

17 **Q. Out of his mouth. And you only noticed it**

18 **when you turned him over and it sort of dripped out?**

19 A. It rolled, yes, down the side of his mouth.

20 **Q. How much blood was it? Did it look --**

21 A. It was a stream of blood outside of his

22 mouth.

23 **Q. Okay. Did it continue to bleed, or was it**

24 **just a dripping and then stop? Do you remember?**

25 A. It was a stream of blood. And when I saw

36 (Pages 129 to 132)

Kimberly Alen

Deposition

April 12, 2005

Page 133

1 that, I dropped him and jumped to the phone and dialed
2 911.
3 **Q.** All right. Do you recall -- after calling
4 ANMC to talk to them about Mr. Allen, did you make any
5 other phone calls, either from the motel or from your
6 cell phone?
7 A. I believe I called the place in Palmer where
8 we were going to get the picture.
9 **Q.** Okay. Any other calls?
10 A. Not that I remember, no.
11 **Q.** And then the emergency team came. And just
12 so I can be clear, do you have a clear recollection of
13 what exactly you told them when they came? Did you
14 just repeat what had happened the best you could
15 remember it, in terms of that day?
16 A. Yeah. Yeah. Everything that I have stated
17 thus far, yeah, I told them exactly, too.
18 **Q.** Did you talk to one person at the scene?
19 A. Talked to many people at the scene.
20 **Q.** Okay. And then they took Mr. Allen. And
21 did you go in the ambulance with him?
22 A. No.
23 **Q.** When did you see him the next time after
24 that?
25 A. Well, I saw them -- when the policemen got

Page 134

1 there, the policemen were giving him CPR. And then
2 the E- -- I can't remember if it was the EMT or
3 firemen got there first. I think it was the firemen,
4 and then the EMT.
5 And I was -- the door to the room was right
6 here (indicating). Todd was laying right here
7 (indicating), because that's where I pulled him off
8 the bed. And I was sitting on the floor right here,
9 watching everything that they were doing, because they
10 were trying to -- you know, they had -- they were
11 trying to jump-start his heart again.
12 And then someone realized that I was sitting
13 there and pulled me away and put me in the lobby, a
14 policeman. I talked to a policeman there.
15 And then I saw them wheel him out on, you
16 know, the things they have. And someone was on top of
17 him giving -- you know, doing his heart as they were
18 wheeling him out.
19 And then that policeman I was talking with
20 gave me a ride to Providence. And the next time I saw
21 him he was in the room, in a room -- an emergency room
22 at Providence.
23 **Q.** And your attorney has produced some phone
24 records of your cell phone and also phone records
25 apparently from the hotel. And I'm not going to mark

Page 135

1 these as an exhibit because I just want to ask you
2 about them. One is a phone record. It appears to be
3 for a phone number 223-8728. Is that your cell phone?
4 A. Yes, it is.
5 **Q.** And the record for April 19th that looks
6 like it's a call to ANMC, the number being 563-2662,
7 the billing has that record at 3:47 p.m. And I don't
8 expect you to remember the exact time. But does that
9 sound about right, that it was late afternoon that
10 Saturday?
11 A. Yes.
12 **Q.** And then there's a number -- right after
13 that there's a directory assistance call, and then
14 there's a call at -- well, both of these calls are at
15 about 4:28. A call to 745-1420, out in Palmer. Do
16 you think that's the call that you made about this
17 painting?
18 A. Probably, yes.
19 **Q.** And then there's a call at about 6:27 to a
20 number in -- looks like in Washington, Sedro Woolley.
21 Do you know who that is?
22 A. My parents.
23 **Q.** It's your parents. And then there's a call
24 to Cordova. Would have been to --
25 A. Todd's parents or his brother.

Page 136

1 **Q.** And so this would confirm that you -- if
2 this record is accurate, that you had one call to ANMC
3 that afternoon?
4 A. (Witness nods head.)
5 **Q.** And then there's a -- the call that you made
6 to the emergency service, did you use the hotel phone
7 for that one?
8 A. Yes.
9 **Q.** And then there's kind of a copy of a
10 billing. It appears to be from Microtel. It's marked
11 Allen, parentheses, Microtel, number one. Only it
12 shows phone call billings for April 18th. Can you
13 explain why there's a difference in the dates of the
14 billing versus when you made the call?
15 A. No.
16 **Q.** And assuming that this is just an error in
17 the billing date, it appears that there's a call to
18 911 at about five -- looks like 5:23 or 5:13. It's a
19 little after 5:00 -- the number is hard to read -- on
20 the Saturday afternoon. Is that consistent with your
21 recollection?
22 A. Yes.
23 **Q.** Okay. Do you need to take a break or can
24 we -- I'm going to try and finish this up so we can
25 get -- I don't want to push you. I understand this is

37 (Pages 133 to 136)

Kimberly Alen

Deposition

April 12, 2005

Page 137

1 difficult, but I don't want to keep you here longer
2 either.

3 A. No. Let's just keep plowing through it.
4 Thanks for asking.

5 Q. And have we exhausted the topic of what you
6 did that day from the time you left ANMC until the
7 time you called the emergency service? We have talked
8 about a lot of things. I don't want to go through
9 them, but I want to give you the opportunity to tell
10 me anything else. Anything else you did in terms of
11 errands or talking to anyone or, you know, even if you
12 just went down to the hotel cafeteria or you went
13 outside for a walk. Anything like that that you can
14 remember?

15 A. No. I believe we have covered it all.

16 Q. And in terms of the timing as you remember
17 it, generally it's you came back to the hotel.
18 Mr. Allen took a nap. You went out to the store. You
19 came back. And once you came back, you were there
20 until the emergency team came to get him?

21 A. Correct.

22 Q. And the only outside contact you had during
23 that period, once you came back, was the phone call to
24 ANMC?

25 A. Correct.

Page 138

1 Q. You never left the hotel room or did
2 anything else?

3 A. Correct.

4 Q. All right. Mr. Allen was taken to
5 Providence Hospital. Is that correct?

6 A. Yes.

7 Q. And then how did you get to Providence
8 Hospital?

9 A. The policeman drove me.

10 Q. Once you got there, do you recall talking to
11 the doctors who were treating Mr. Allen?

12 A. I remember sitting outside the room. I
13 pulled out a chair. I remember someone coming out and
14 talking to me. And my girlfriend was there, Andi
15 Tiedeman.

16 Q. What was her name?

17 A. Andi Tiedeman, T-i-e-d-e-m-a-n.

18 Q. And did she show up at the hospital with --

19 A. I called her, yes. She showed up.

20 Q. And the reason I'm asking is there are
21 several records from Providence that document the
22 doctor's notes of conversations they had with you.

23 What I first want to find out: Can you
24 recall specifically which doctors you talked to and
25 what questions they asked you and what you told them?

Page 139

1 I mean, do you have a recollection of that afternoon,
2 or is it kind of muddled in your mind now?

3 A. I don't really have a recollection of that.

4 I just -- like I said, I was sitting out there. I

5 remember there was a doctor talking to me, and that

6 Andi wanted to leave, because she thought it was a

7 private conversation. And I told her no, to stay.

8 And, you know, I couldn't tell you what he or she -- I

9 don't even remember -- said to me. And then I

10 remember there was a priest following me around.

11 Q. And there are two doctors whose reports I

12 see. One is a Dr. Loretta Lee. Another is a

13 Dr. Susan -- Susan Dietz. Now, they have prepared

14 reports which document what they reported in terms of
15 talking with you or their observations.

16 Can you -- and I don't want to spend a lot

17 of time asking you questions if you don't really

18 remember what you said to the doctors at this point.

19 Do you remember your conversations with them or what
20 you would have said specifically?

21 A. No.

22 Q. Okay. And one thing I want to clear up,
23 because in one of the reports the timing is a little
24 different. And I'm not suggesting that your version
25 is correct or this one is correct, but I want to make

Page 140

1 sure I check it.

2 In a report by Dr. Lee -- this is marked

3 Prov 284. Dr. Lee has the timing that you made a call

4 to ANMC, talked to someone at ANMC, and then you went

5 out to go shopping. And you came back at about 5:00

6 and then found Mr. Allen and proceeded to call the

7 emergency response team.

8 A. That's incorrect.

9 Q. That's a little different than your

10 recollection here today. You think that version is
11 incorrect?

12 A. I know it's incorrect.

13 Q. Okay. So your recollection is -- I'm not

14 going to go over it again, but we have got it down.

15 And to the extent the doctor wrote it that way in this

16 report, you think she just has that information

17 incorrect?

18 A. She wrote it incorrect.

19 Q. Okay. Is there anything significant you can

20 remember about your discussions with the doctors at

21 Providence? And I'm talking now before the time where

22 you knew that your husband was not going to recover,

23 when you were just there initially and they were

24 treating him. Do you remember anything significant

25 that they told you about, what his condition was, what

Kimberly Alen

Deposition

April 12, 2005

Page 141

1 the problem was, what they were going to do in terms
 2 of treatment, anything like that?
 3 A. No. I can't.
 4 Q. And did they tell you that afternoon that
 5 they thought his prognosis was going to be pretty bad?
 6 A. Yeah. And even it went into the next day.
 7 They weren't sure. Yeah, I don't really call specific
 8 conversations. They just weren't positive of the
 9 extent of what happened. At least that's what I
 10 remember.
 11 Q. And I think I asked you this but just --
 12 because it occurred to me. After you left ANMC up
 13 until the time the emergency team came to get him, did
 14 you ever see Mr. Allen take any pain medication during
 15 that period?
 16 A. I never saw him take any.
 17 Q. Okay. There's a reference in one of the
 18 records to a discussion with you about when the
 19 decision was made that he was not going to recover,
 20 that they asked you about whether you wanted to have
 21 an autopsy. Do you remember any discussion like that?
 22 A. I asked them.
 23 Q. Whether you could have an autopsy done?
 24 A. Yes.
 25 Q. And what did they tell you?

Page 142

1 A. They said that if I wanted to have an
 2 autopsy done, I would have to pay for it.
 3 Q. And who told you that?
 4 A. I don't remember specifically who said it.
 5 I wanted to see about having an autopsy so I could
 6 determine what happened exactly.
 7 Q. And who did you talk to? Was this someone
 8 at the hospital?
 9 A. It was someone at Providence. They said I
 10 would have to pay for it, and the general course of
 11 business is that they only -- you know, I don't
 12 remember their specific words. But if it's a
 13 questionable cause of death, then they would do an
 14 autopsy.
 15 Q. Oh, I see. If they had some suspicion about
 16 how the person died --
 17 A. Correct.
 18 Q. -- criminal activity, they might to it
 19 automatically?
 20 A. Yeah.
 21 Q. But if you wanted to do an autopsy, you
 22 would have to do it at your expense?
 23 A. Yeah. And then it would be not done timely.
 24 Q. And what does that mean?
 25 A. It would take them a while to get to do it,

Page 143

1 be able to do it. You know, they wouldn't be able to
 2 do it like that day or the next day or something.
 3 Q. All right. And did they say that that was
 4 going to be a problem or just that that was a fact,
 5 that it wouldn't be done right --
 6 A. That was just one of the points that they
 7 brought up.
 8 Q. Okay. And so did you decide not to have
 9 your autopsy?
 10 A. Yeah. It just -- you know, it didn't seem
 11 that it was needed at that time. It didn't seem
 12 prudent.
 13 Q. You initially wanted to have the autopsy so
 14 you could try and find out what had happened?
 15 A. Yeah. It was just -- yeah, basically.
 16 Q. And did you -- there are lots of medical
 17 records in here, but did you ever keep any written
 18 notes of your discussions with the doctors or with
 19 anyone else, even in a calendar book or date book?
 20 A. Of the whole Providence thing?
 21 Q. Well, or anything, from the time you started
 22 at ANMC all the way up through your --
 23 A. I didn't.
 24 Q. Have you ever seen anyone, any of your
 25 relatives or anyone who took notes of what you were

Page 144

1 saying to the doctors or what they were saying to you,
 2 anything like that?
 3 A. To the people at ANMC? I'm sorry. Could
 4 you restate it, please?
 5 Q. That's fine. I'm trying to find out if
 6 there's any record of these discussions. We have got
 7 the medical records, and we have your testimony. But
 8 I take it there's no written record that you sat down,
 9 either at the time or even days later, sat down and
 10 said, okay, I'm going to try and re-create exactly
 11 what happened on April 19th and sat down and try to
 12 write out what had happened? You didn't do that?
 13 A. No.
 14 Q. And so my next question is: Well, are there
 15 any notes where -- for example, if you were on the
 16 phone with the person at ANMC from the hotel, you
 17 might have taken some notes on a piece of paper.
 18 Maybe you didn't --
 19 A. No.
 20 Q. -- but I won't know unless I ask. Do you
 21 have any phone notes like that?
 22 A. No, I don't.
 23 Q. Do you have any personal notes, other than
 24 what we already talked about on Exhibit 18, that
 25 document what was going on when you visited ANMC with

39 (Pages 141 to 144)

Kimberly Alen

Deposition

April 12, 2005

Page 145

1 Mr. Allen?

2 A. No.

3 Q. All right. What happened next? I want to
4 try and carry this out through. You were told at some
5 point by the doctors at Providence that Mr. Allen
6 wasn't going to recover?

7 A. I was told that he had most likely had an
8 aneurysm.

9 Q. Did they explain to you what that was?

10 A. Yes.

11 Q. And then did they tell you that he was
12 likely not going to recover from that?

13 A. They explained that -- they explained the
14 process, you know, that basically his brain was
15 shutting down. It hadn't fully shut down. He was on
16 life support, breathing. It was difficult because his
17 hands were twitching. He was doing things like that.
18 But evidently the doctor said that that's part of the
19 process, that when the brain stem shuts down, that's
20 what happens. And when the brain stem shuts down,
21 that's -- he is brain-dead.

22 Q. And so he never woke up from the time he
23 went and took a nap at the hotel up until the time he
24 was declared dead. He never woke up?

25 A. Correct.

Page 146

1 Q. And after you left the hospital, when you
2 were informed that Mr. Allen was not going to recover,
3 where did you go then? Were you staying in Anchorage
4 then in a hotel, or did you go back to Valdez?

5 A. A friend, Chuck Totemoff, is the CEO of
6 Chenega Corporation, and they own the hotel downtown
7 here. He gave everybody discounted free rooms. And
8 so pretty -- by that time all the family was here, and
9 we were all there at that hotel.

10 Q. And when you say all the family, Mr. Allen's
11 parents were there?

12 A. His parents, my dad, my sister. Todd's
13 family is huge. There was a lot of people.

14 Q. How long --

15 A. The waiting room was packed. I would say
16 that there was generally always a minimum of 50 people
17 there.

18 Q. And how long did that last, that all the
19 family was here in Anchorage with you?

20 A. We went there -- I think we had the viewing
21 on Monday or Tuesday, and I think his funeral was
22 Wednesday. I may have the days wrong. But we stayed
23 in that hotel the whole time that we were all here.
24 And then we all had to charter a bigger jet to go to
25 Cordova, because that's where he was buried.

Page 147

1 Q. Okay. And then after he was buried, where
2 did you go next?

3 A. I stayed in Cordova with my sister for a
4 little bit, and then I went back to Valdez for a
5 little bit. Then I came up here to Anchorage. Pretty
6 much that whole summer there was not a two-week period
7 where I was in one place.

8 Q. You were traveling back and forth between
9 Anchorage and Valdez?

10 A. Anchorage and I stayed with friends, Andi
11 and Will Tiedeman, in Anchorage, or I would go to
12 Cordova and stay with my sister. Or I would go to our
13 house, which we had just purchased, for a few weeks.
14 All summer I rotated around.

15 Q. And can you tell me: Since -- let's take it
16 from the day that you were at ANMC with Mr. Allen up
17 until the present. Have you ever gone back to talk to
18 either the nurse or this other person that you thought
19 was a doctor, or anyone else at ANMC, to talk to them
20 about what had happened?

21 A. No.

22 Q. And how about at Providence? Now, I
23 understand you talked to the doctors when Mr. Allen
24 was there being treated. But since he was -- since
25 the period which, you know, he was discharged and you

Page 148

1 had the burial, have you ever gone back to talk to --
2 up until the present, have you ever gone back to talk
3 to any of the doctors at Providence to ask them what
4 happened or --

5 A. No.

6 Q. Since Mr. Allen's death until the present,
7 have you personally done any research about either
8 subarachnoid hemorrhage or about aneurysm or about
9 medical conditions like Mr. Allen's to find out what
10 they're like or what causes them? Have you done
11 anything like that?

12 A. Minor, basically just the Internet. You get
13 on the Internet, put in "brain aneurysm," and there's
14 different types and kinds, evidently. You know, one
15 thing I found was that head trauma is and can be a
16 cause to a brain aneurysm.

17 Q. And when you did this research, when was
18 that? Was that closer in time to when Mr. Allen
19 passed away or is it more recent?

20 A. I have been consistently doing -- I mean,
21 when I say "consistently," I mean it's like in the
22 middle of, you know, downtime or something, get on the
23 Internet and surf around for about a half an hour and
24 I'm done, because that's all I can handle.

25 Q. Do you ever print off the articles, or you

40 (Pages 145 to 148)

Kimberly Alen

Deposition

April 12, 2005

Page 149

1 just read them?
 2 A. I just read them.
 3 Q. And you said something that was a little --
 4 you said something about head trauma could be a cause
 5 of aneurysms?
 6 A. That's what I read, yes.
 7 Q. Is there any reason for you to think that
 8 Mr. Allen had some sort of head trauma that caused the
 9 aneurysm?
 10 A. He was hit by a car.
 11 Q. And that's what I was -- you think it
 12 might -- if that were a cause, that that would be the
 13 trauma you would think would be the car accident?
 14 A. That came to my mind, yes. I don't know
 15 that that is the case or not, but I'm just saying --
 16 Q. I wasn't suggesting it was. I just wanted
 17 to make sure. Let's take it from the time of the car
 18 accident up to the present. Leaving aside the car
 19 accident for the moment and leaving aside this event,
 20 him dying, did Mr. Allen have any other serious
 21 injuries or illnesses since 1999 up to the present?
 22 A. No.
 23 Q. So any head trauma that you think of would
 24 have been the car accident. He didn't have some
 25 subsequent fall or blow to his head or anything?

Page 150

1 A. Correct.
 2 Q. All right. And "serious illness," I include
 3 in that, you know, he didn't have any cancer or
 4 leukemia, pneumonia, anything that would have required
 5 medical treatment and maybe admission to a hospital,
 6 nothing like that?
 7 A. Correct.
 8 Q. Other than that accident in 1999, do you
 9 know if Mr. Allen ever had any other -- maybe even
 10 before that, any other car accidents or serious
 11 injuries?
 12 A. Not that I'm aware of.
 13 Q. And I would be more interested in injuries
 14 that might have affected his head. I don't mean if he
 15 broke his foot or something.
 16 A. Yeah.
 17 Q. You're not aware of any?
 18 A. No.
 19 Q. Okay. If you could take a look at the
 20 document that I think I marked as the first exhibit
 21 today. And I forget what number it is. It's the
 22 discovery responses. On the bottom. There you go.
 23 Do you see that, Mrs. Allen?
 24 A. Yes.
 25 Q. I had a couple of questions about your

Page 151

1 response with regard to medical care. It would be
 2 Interrogatory No. 5. I was asking whether you or your
 3 daughter had received any medical treatment. Do you
 4 see that question in Interrogatory No. 5?
 5 A. Yes.
 6 Q. And the answer referred to "Kimberly Allen's
 7 anxiety and inability to sleep: Dr. Thomas Wiggins."
 8 I had a couple questions about that. First,
 9 when did you start having these symptoms of anxiety,
 10 inability to sleep?
 11 A. A couple months ago.
 12 Q. And was there some particular reason why
 13 they started all of a sudden? What triggered it?
 14 A. This court case.
 15 Q. This case?
 16 A. Having to go through this thing all at once,
 17 because when Todd -- when Todd died, I was pregnant,
 18 so I didn't really fully process everything all at
 19 once. I did it in bits and pieces.
 20 And then when Presley was born, you know,
 21 you got to function. You don't really have -- I
 22 didn't have time to think through all this all in
 23 consecutive order all at once. And now I'm having to
 24 do that and it's difficult.
 25 Q. And so you think when you started thinking

Page 152

1 about it in recent months, that's when it started
 2 bothering you?
 3 A. (Witness nods head.)
 4 Q. And can you give me an idea of: How often
 5 does this happen? Is it every night, a couple times a
 6 week, a couple times a month? How often?
 7 A. Does what exactly? The anxiety?
 8 Q. The anxiety and inability to sleep. Let's
 9 take them separate. The anxiety, how often do you get
 10 anxiety?
 11 A. Lately, every day.
 12 Q. And how does that affect you? How do you
 13 know that you're anxious?
 14 A. My chest feels -- I originally went in
 15 because I was worried about my chest, because it felt
 16 just really tight, and, you know, I wanted to make
 17 sure I wasn't having a heart attack or something crazy
 18 like that. So they actually did an EKG and made sure
 19 my heart's fine and everything like that. And just
 20 talking with the doctor.
 21 Q. And how often -- since it started a couple
 22 months ago, how often has that happened?
 23 A. The swelling up of my chest?
 24 Q. Where you feel like you're anxious, yes.
 25 A. Well, he's given me medicine that's helped

41 (Pages 149 to 152)

Kimberly Alen

Deposition

April 12, 2005

Page 153

1 me through that, that's helped me -- I don't know what
2 the right way to say this would be, but to not be so
3 anxious, I guess.

4 **Q. Before you got the treatment with**
5 **medication, how often was it bothering you?**

6 A. Every day.

7 **Q. Okay. And how long did it bother you before**
8 **you went to seek treatment?**

9 A. A while, couple weeks, two, three weeks.

10 **Q. And once you went to the doctor and he gave**
11 **you treatment, was it effective?**

12 A. Yes.

13 **Q. Do you know what medication he gives you for**
14 **that?**

15 A. Zoloft.

16 **Q. Zoloft?**

17 A. Zoloft and Xanax.

18 **Q. How often do you take it?**

19 A. The Zoloft is every morning.

20 **Q. You said Xanax is another one?**

21 A. Xanax is for mostly the inability to sleep
22 and if I have any major panic attacks or something
23 crazy.

24 **Q. So you feel like that is under control with**
25 **the medication?**

Page 154

1 A. Yes. I actually went back a couple days
2 ago, and he upped my Zoloft. But yeah, it's helping
3 considerably.

4 **Q. Has Dr. Wiggins indicated to you how long he**
5 **thinks you will be on the medication?**

6 A. He has not indicated, no. I anticipate,
7 though, once -- I don't think it will be long.

8 **Q. I mean, he's not told you we're going to do**
9 **this for two weeks and then stop. He's just**
10 **continuing to treat you?**

11 A. Correct.

12 **Q. How about the inability to sleep? Did that**
13 **start at the same time as the anxiety?**

14 A. Yeah. Well, that -- yeah.

15 **Q. And how often was that bothering you? Every**
16 **night?**

17 A. Yeah.

18 **Q. And are you being treated for that now?**

19 A. It's basically the Xanax, yes.

20 **Q. Does that help?**

21 A. Yeah.

22 **Q. And recognizing that you're taking this**
23 **medication, do you feel like you're back to somewhat**
24 **normally functioning now?**

25 A. Somewhat normal functioning so that I can

Page 155

1 process this better, yes.

2 **Q. And I don't mean to suggest that you are**
3 **forgetting about your husband or that you're over that**
4 **problem. But in terms of being able to do daily**
5 **activities and be able to sleep at night and get up**
6 **and go to work, are you able to do that now?**

7 A. I don't have a choice. I have to with
8 Presley.

9 **Q. And have you been able to do that over the**
10 **last several months?**

11 A. Yes.

12 **Q. Aside from the medication that Dr. Wiggins**
13 **has prescribed for you, is there any other treatment?**
14 **For example, has he recommended that you go see a**
15 **therapist or seek counseling or anything like that?**

16 A. He hasn't recommended it. I would love to,
17 but I just don't have time. I mean, I work 40 hours a
18 week. I go to school part time, because I have to
19 provide for Presley's future. And then I have
20 Presley, so, you know, I have to function.

21 **Q. So if you had the time and opportunity, you**
22 **think you might benefit from counseling, but you**
23 **haven't had the opportunity yet?**

24 A. Correct.

25 **Q. All right. And so then I would ask**

Page 156

1 **follow-up questions if you had gone to a counselor to**
2 **see what they thought about it, but you haven't even**
3 **been able to talk to someone yet?**

4 A. Correct.

5 **Q. What about, if not a counselor, have you had**
6 **any counseling with like a priest or**
7 **religious-affiliated person, counselor, something like**
8 **that?**

9 A. No.

10 MR. GUARINO: And I'll have my office -- if
11 you don't have the records for Dr. Wiggins, I guess
12 we'll either get a release to get --

13 MS. McCREADY: Yeah, I don't have them. I
14 asked for them.

15 THE WITNESS: Yeah. When I went that day,
16 they were just copying that day.

17 BY MR. GUARINO:

18 **Q. Let me ask a few questions. Aside from**
19 **those two conditions, anxiety, inability to sleep, is**
20 **there any other physical injury that you have that you**
21 **think is related to this lawsuit?**

22 A. Physical injury?

23 **Q. Physical injury.**

24 A. No.

25 **Q. Okay. Any other mental or psychological**

42 (Pages 153 to 156)

Kimberly Alen

Deposition

April 12, 2005

Page 157

1 injury that you think -- something that you feel has
2 been damaged or you suffered an injury that you're
3 still suffering from that's related to the lawsuit?
4 And I don't mean the grief of your husband. I
5 don't -- that I understand. I'm talking about
6 something that would be more of a medical condition,
7 like if you felt I'm losing my memory or I'm having
8 trouble, you know, I can't drive a car because I get
9 double vision. I'm trying to find out if there are
10 other injuries or conditions that you have separate
11 and apart from the grief you might feel for Mr. Allen.
12 Anything like that?

13 A. Besides worrying about Presley's future, no.

14 Q. Okay. And that's sort of a concern about
15 financially what you're going to do for her in the
16 future?

17 A. Financially and emotionally. She's not
18 going to ever know her father.

19 Q. Anything else like that?

20 A. The list is huge.

21 Q. And I can only get what you can tell me. I
22 don't mean to belittle any of this. I can either
23 assume or I can ask, and it's my job to ask.

24 A. Sure.

25 Q. Let me --

Page 158

1 A. Todd was my best friend, and he's gone. I
2 will never have him again.

3 Q. And maybe let me ask a few questions about
4 Presley. She's 18 months old now?

5 A. Right.

6 Q. Has she had any serious injuries or
7 illnesses?

8 A. No.

9 Q. Does she appear to be developing normally at
10 this point?

11 A. Yes.

12 Q. Is she -- I assume she's not, but let me
13 make sure. I assume at this point she's not aware of
14 the fact -- cognitive of the fact that her father is
15 dead.

16 A. She's not cognitive of it, no.

17 Q. I mean, you might have told her, you might
18 have mentioned it, but do you get any sense that she's
19 aware of what that means?

20 A. She's -- she's starting to process that
21 there's a mother and a father. It's kind of odd. I
22 mean, to me, it's odd, but she's calling all men
23 Daddy.

24 Q. Have you had to have a talk with her yet
25 about the fact that her father is dead?

Page 159

1 A. She's 18 months old. I mean, I talk to her
2 every day about it, but I don't -- she's 18 months
3 old.

4 Q. Okay. You don't think yet that she's
5 processing it?

6 A. I don't know that -- yeah, I don't know that
7 for sure.

8 Q. How about in terms of any medical care or
9 any advice from her pediatrician? Is there any
10 developmental problems you're aware of?

11 A. No, no developmental problems.

12 Q. If we can look at the interrogatory
13 responses again. There's a reference to a question
14 about damages in there, and I'm trying to find the
15 number. I believe it's Interrogatory No. 3.

16 MS. McCREADY: What page are you on?

17 MR. GUARINO: It would be page three of that
18 exhibit. It's Interrogatory No. 3.

19 Q. And the response said, "Plaintiff seeks loss
20 of contributions for support for herself and her
21 daughter and loss of prospective training and
22 education." And I'm focusing now on the second part
23 of that sentence, "loss of prospective training and
24 education." Are you able to tell me what that
25 includes?

Page 160

1 A. Me, specifically?

2 Q. Yes.

3 A. Support for her and daughter and loss -- I
4 would say for prospective training and education for
5 all three of us. Todd, I mean, continuing -- he was
6 always -- he wanted to go back to school because he
7 wanted to be on the Tatitlek corporation board. He
8 wanted to go back to school for business so that he
9 could further his education and help his corporation
10 earn more money and make better choices. My
11 education, I'm now having to give up my time with
12 Presley to go to school to further my education so
13 that I can support us.

14 Q. Were you planning to go back to school -- if
15 Mr. Allen were still alive, had you always planned to
16 go back to school, or were you --

17 A. We had -- the plan was to move to Valdez and
18 then eventually, you know, I would wean off of work
19 slowly, go back to school when Presley -- you know,
20 after Presley was born. It was all, you know, a
21 family plan. You get married. You have kids. I
22 always wanted to further my education.

23 Q. Had you talked at all about family planning
24 in terms of how many children you were going to have?

25 A. Never how many. A couple.

43 (Pages 157 to 160)

Kimberly Allen

Deposition

April 12, 2005

Page 161

1 Q. All right.

2 A. He wanted a lot. I wanted two.

3 MR. GUARINO: Let's go off record for a
4 second.

5 (Off record.)

6 MR. GUARINO: On record.

7 Q. Mrs. Allen, now that we have sat through
8 this, I just want to be sure I have gotten all the
9 information I can in terms of what information
10 Mr. Allen gave to the -- either the nurse or the
11 second person who you thought was a doctor at ANMC
12 about his symptoms. And I'm not going to go through
13 what you testified to before, because that's on the
14 record. But is there anything else you can think of
15 that we haven't talked about? Any other -- if he
16 said, you know, his ankle was hurting him or his hand
17 was hurting him or he had a rash or he felt like he --
18 I don't want to suggest things, because I want it to
19 be something you remember.

20 A. I'm not sure I understand what you're
21 asking.

22 Q. Anything else? I just want to make sure I
23 have exhausted that, that there's nothing else you can
24 think of that he complained about that we haven't
25 talked to up to this point.

Page 162

1 A. Not that I can think of right now.

2 Q. And I'm not suggesting there wasn't. I try
3 and listen and write notes at the same time, and I
4 want to make sure I have got that question covered.

5 Have you ever reviewed Mr. Allen's medical
6 records in the case, either his prior records for his
7 chronic pain or the records at Providence to see what
8 treatment he received?

9 A. You mean from his car wreck on or from --

10 Q. Well, let's -- I don't know that you would
11 have gone all the way back, but let's say -- let's
12 start with the period from the car wreck until the
13 incident in this case on April 19th. Have you ever
14 gone back and looked at those records to see what was
15 going on during his visits to ANMC and what kind of
16 medication he received? Have you ever looked at that?

17 A. I looked at them, but I have never really
18 reviewed them.

19 Q. Okay. How long ago was that that you had
20 looked at them? Was it all at one sitting?

21 A. A week ago. Yeah. Yeah. I mean, I have a
22 box of them. But they're all from the prior trial.
23 You get copies of everything, you know. They're not
24 in any order, and I didn't really look at them. I
25 looking for other --

Page 163

1 Q. Did you look at those records back in
2 connection with the prior trial, or was this the first
3 time you looked at them?

4 A. This was the first time.

5 Q. How about the records from the time of the
6 visit of ANMC up through his treatment at Providence?
7 Have you ever looked at those records to go back and
8 see what they say or what treatment he was provided?

9 A. No.

10 Q. Okay. I don't think I asked you this, but
11 let me just check it off. Have you ever gone back to
12 talk to any of the people who came to the hotel to
13 provide emergency treatment to your husband?

14 A. No, I have not talked with them.

15 Q. If Mr. Allen had not been -- if he had not
16 died and you had had Presley, were you going to stay
17 home to take care of her while she was in preschool?

18 A. Well, I worked -- the way we had it planned
19 out was we bought that house in Valdez. I was working
20 for Hughes Thorsness over the Internet, and they were
21 variable hours, as long as the work was done, even
22 though they wanted me on-line the majority of the
23 time. So, yes, I would be home with Presley at all
24 times.

25 Q. So you would have been home taking care of

Page 164

1 Presley and working over the Internet with Hughes
2 Thorsness?

3 A. Correct.

4 Q. Would you have been working -- now you
5 indicate you're working 40 hours a week.

6 A. Correct.

7 Q. Would you have been working that many hours
8 a week while you were taking care of Presley if you
9 were in Valdez?

10 A. That was the plan, but that's hard to say if
11 it would have actually happened.

12 Q. Okay. And can you tell me: In terms of
13 your own personal grief over this and your feelings,
14 has that gotten better over time since Mr. Allen's
15 death, or do you think that it was delayed because of
16 your pregnancy and now you're starting to work through
17 it?

18 A. I think I am still grieving. I think it's
19 getting worse, because now I'm having to deal with it
20 face front at all times.

21 Q. In the lawsuit, you mean?

22 A. Yeah. Well, yeah, in the lawsuit. I'm
23 having a really hard time with Presley, when she gets
24 sick. We have been to the doctor many times, even
25 though she just has a cold. Anything minor, we go to